

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman;  
Dan G. Blair;  
Tony L. Hammond; and  
Nanci E. Langley

Nooksack Post Office  
Nooksack, Washington 98276

Docket No. A2011-17

ORDER REGARDING ADMINISTRATIVE RECORD

(Issued June 27, 2011)

On May 16, 2011, the City of Nooksack, Washington (Petitioner) filed an appeal seeking review of the Postal Service's decision to close the Nooksack post office.<sup>1</sup> In Order No. 734, the Commission established a procedural schedule, which among other things, set May 31, 2011 as the deadline for the Postal Service to file its administrative record for the Nooksack post office.<sup>2</sup> The Commission also directed the Postal Service to file any responsive pleading by the same date. Order No. 734 at 4, 6.

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<sup>1</sup> Appeal of Closure of Nooksack Post Office, Nooksack, Washington 98276, May 16, 2011 (Appeal). A Response of United States Postal Service to Petitioner's Application for Suspension of Discontinuance for the Nooksack Branch, Nooksack, Washington 98276 was filed May 27, 2011. A Supplemental Response of United States Postal Service to Petitioner's Application for Suspension of Discontinuance for the Nooksack Branch, Nooksack, Washington 98276 was also filed May 27, 2011.

<sup>2</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, May 19, 2011 (Order No. 734).

On May 31, 2011, the Postal Service filed a motion to dismiss this proceeding arguing that Petitioner's appeal is not within the scope of the Commission's jurisdiction under 39 U.S.C. 404(d) because the Nooksack post office is suspended and not closed.<sup>3</sup> On June 14, 2011, Petitioner filed a motion to compel the Postal Service to file the administrative record.<sup>4</sup> Petitioner notes that the Postal Service has solicited comments and held a community meeting regarding closing the Nooksack post office. Motion to Compel at 2-3. Petitioner maintains that Order No. 734 requires the Postal Service to produce the administrative record developed for proposed closure. *Id.* at 2. The Public Representative filed an answer in support of Petitioner's motion to compel.<sup>5</sup>

On June 22, 2011, the Postal Service filed a response contending that it complied with Order No. 734, by filing a responsive pleading (the Motion to Dismiss) on May 31, 2011.<sup>6</sup>

The Commission finds it necessary to clarify its directive to the Postal Service. In Order No. 734, the Commission directed the Postal Service to file the administrative record for this appeal by May 31, 2011. The Commission also provided the Postal Service with the opportunity to file any responsive pleading by May 31, 2011.

The Commission has before it two competing contentions and two competing motions. Petitioner appealed the Postal Service's closing of the Nooksack post office. The Postal Service moved to dismiss the Appeal claiming that the Nooksack post office was suspended on May 27, 2011, due to the expiration of the lease for the facility housing the Nooksack post office. Motion to Dismiss at 2. The Petitioner claims that the Postal Service has closed the Nooksack post office and moves to compel the

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<sup>3</sup> Motion of the United States Postal Service to Dismiss Proceedings, May 31, 2011 (Motion to Dismiss).

<sup>4</sup> Motion of the Petitioner, City of Nooksack, to Compel Administrative Record, June 15, 2011 (Motion to Compel).

<sup>5</sup> Answer of the Public Representative in Support of Petitioner's Motion to Compel, June 15, 2011.

<sup>6</sup> Response of United States Postal Service in Opposition to Motion of the Petitioner, City of Nooksack, to Compel Filing of Administrative Record, June 22, 2011 (Response).

administrative record. Motion to Compel at 1. The Postal Service responds reiterating its position that operations at the Nooksack post office are suspended. Response at 1, 2.

Exhibits filed by Petitioner as part of the Appeal indicate that the Postal Service cancelled the lease notwithstanding the landlord's apparent willingness to extend it. See Appeal Exhibit C, Exhibit F. Section 611 of the Post Office Discontinuance Guide lists the termination of a lease when other quarters suitable for housing an independent Post Office are not available as one condition justifying an emergency suspension.<sup>7</sup> To clarify the circumstances surrounding the closure or suspension of the Nooksack post office, the Commission grants the Motion to Compel the administrative record.<sup>8</sup> A decision on the Postal Service's Motion to Dismiss will be held in abeyance until the Commission has reviewed the administrative record.

*It is ordered:*

The Motion of the Petitioner, City of Nooksack, to Compel Administrative Record, dated June 15, 2011, is granted. The Postal Service is directed to file the Administrative Record by July 1, 2011.

By the Commission.

Shoshana M. Grove  
Secretary

Commissioner Blair dissenting.

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<sup>7</sup> Post Office Discontinuance Guide, Handbook PO-101, August 2004.

<sup>8</sup> As with orders issued in Docket Nos. A2011-1 (Order No. 620) and A2011-4 (Order No. 688), this order neither represents a ruling on the merits of the jurisdictional issue nor whether the discontinuance is subject to 39 U.S.C. 404(d).